

**TOWN OF ALLENSTOWN
Zoning Board of Adjustment
Allenstown Town Hall –16 School Street
Allenstown, New Hampshire 03275
June 23, 2021**

Call to Order

The Allenstown Zoning Board of Adjustment Meeting of June 23, 2021 was called to order at 6:35 PM by Chair Klawes.

Chair Klawes called for the Pledge of Allegiance.

Roll Call

Present on the Board: Dawna Baxter, Keith Klawes, Matt Pitaro, Steve LaPorte

Excused: Matt L'Heureux

Allenstown Staff: Derik Goodine, Town Administrator

Also present: Brian Arsenault, Code Enforcement Officer (virtually), Paul Stauffacher (Applicant), Jack D. Hepburn, Esq. (Agent for Applicant), Scott McDonald, Economic Development Committee member

Correspondence & Other Business

- **ZBA to vote in a new Chair, Vice-Chair and Secretary**

Mr. Pitaro made a Motion to nominate Keith Klawes as Chair of the Zoning Board of Adjustment. Ms. Baxter seconded the Motion.

Roll call vote was taken.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte –Aye

Matt Pitaro-Aye

Motion was passed unanimously.

Chair Klawes made a Motion to nominate Matt Pitaro as Secretary of the Zoning Board of Adjustment. Ms. Baxter seconded the Motion.

Roll call vote was taken.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte –Aye

Matt Pitaro-Aye

Motion was passed unanimously.

Chair Klawes said they are looking for more members of the Planning Board, including alternates.

Old Business

- **Receipt of Applications & Public Hearings**

None.

New Business - Receipt of Applications & Public Hearings –

- **ZBA Case #2021-01- 91 Pinewood Road (Lot#105-map #003)**

Mr. Hepburn requested to put a single family residence on 36 acres of a property that is zoned commercial and industrial. He said one the main reasons he thinks this is justified is because of the character of the surrounding neighborhood currently. He asked if the abutting residences were granted a variance or whether they were constructed before the zoning took place. He said one of the main things to consider when thinking about variance is the essential character of the neighborhood, and since it is currently mixed use now with both commercial and residential, putting a single home will not change that very much.

Mr. Hepburn said the next thing to consider in addition to putting in a single family residence, the Applicant also hopes to run his general contractor business out of his home and this would add a commercial aspect to it. He said the topography of the property with the prevalence of wetlands seems to have made it not commercially viable.

Chair Klawes asked that he go through each criteria on the application.

Mr. Hepburn said the first and second criteria, that it will not be contrary to public interest and the spirit of the ordinance is observed should be considered together. He said based on what he was saying previously, the ordinance seems to segregate residential and commercial because of issues with mixing them, such as traffic and noise. He said in this case, because the property as it stands is already mixed, the spirit of the ordinance and what it is trying to accomplish isn't applicable.

Chair Klawes says that he is asking them to read the application and then they will ask questions afterward. He said they look at every Applicant individually.

Mr. Stauffacher reads the following:

The subject property consists of 36 acres of undeveloped land on Pinewood Road in Allenstown, NH . The property is identified as Lot 3 on Tax Map 105. The current owner of the Property, Paul R. Stauffacher, acquired title from Dan and Pamela Stauffacher by deed dated April 23, 2021 and recorded April 27, 2021 at Book 3735, Page 2330 of the Merrimack County Registry of Deeds.

He proposed that he wishes to:

[C]onstruct a residence on the property despite that it is zoned Commercial/Light Industrial. The Applicant proposes to construct the residence in accordance with a certain site plan and proposed septic plan which the State has approved and is prepared by Richard J. Kohler, dated March 29, 2021.

He said with regard to zoning issues:

The zoning ordinance provisions at issue here are Article V, § 504, and Article X, § 1001 of the Town of Allenstown Zoning Ordinance. § 504 provides, "Any use which is not expressly permitted in a zone shall be deemed forbidden in the zone." Article X sets out the uses that are permitted in the Commercial /Light Industrial Zone. § 1001 does not expressly permit the construction of a residence in that zone.

With regard to criteria for granting a variance,

The criteria that must be met in order to obtain a variance are set forth in RSA 674:33-1(b). This statute allows the Zoning Board of Adjustment to grant a variance if:

1. The variance will not be contrary to the public interest;
2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of the surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. The statute defines "unnecessary hardship" as follows:

"unnecessary hardship" means that, owing to special conditions of the Property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Property; and
- (ii) The proposed use is a reasonable one.

Mr. Stauffacher said the facts that will support this:

The only change in the neighborhood resulting from the Applicant obtaining the requested variance will be the introduction of a single family home on a 36 acre parcel of land. Three abutting parcels (Tax Map 410, Lots 1 and 2, and Tax Map 105, Lot 40) already contain residential homes despite being located in the CLI Zone. Siting in a single family residence on the Property is consistent with the uses enjoyed by several lots in the immediate area. The Applicant's proposed construction is not contrary to the public interest and does not alter the essential character of the locality or threaten the public health, safety or welfare as further explained below. Accordingly, the building of such a residence will not, in any way, negatively impact the value of surrounding properties.

Chair Klawes said that they will have to make a Motion that they do not need to read the list of abutting properties.

Mr. Stauffacher said the abutting parcels that zoned Commercial/ Light Industrial are Tax Map 410, Lots 1 and 2; and Tax Map 105, Lot 40.

Mr. Stauffacher said if you go up River Road, those next three parcels of land that contain residences are zone C/LI and he is sure they are grandfathered in.

Mr. Pitaro made a Motion to confirm that the listed Abutting Properties in the Application should be entered into the record. Mr. Klawes seconded the Motion.

Roll call vote was taken.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte –Aye

Matt Pitaro-Aye

Motion was passed unanimously.

Mr. Stauffacher said granting the variance is not contrary to the public interest and is consistent with the spirit of the ordinance. He read:

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance.

Mr. Klawes said that he doesn't have to read the legal cases.

He further read:

The spirit and intent of § 504 and Article X, while not explicitly stated, can be presumed to center on the desire to segregate different uses in different parts of the community. Article X, § 1003, which lays out "uses not permitted" in the Commercial/Light Industrial Zone, establishes that no land, building, or premises may be introduced into the zone for a purpose that is

"injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause." The Ordinance seeks to promote the safety and well-being of the community while avoiding inconsistent Property uses that are likely to lead to community issues such as traffic, noise, pollution, and disputes between landowners.

The first step in analyzing whether the granting of a variance will be contrary to the public interest is to examine the applicable ordinance. To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. In determining whether the grant of a variance would violate basic zoning objectives, it is appropriate to examine whether it would alter the essential character of the locality or threaten the public health, safety or welfare. It is also appropriate to consider whether the locus is especially suited for the proposed use.

In this particular case, the Applicant proposes to construct a residence on his Property in accordance with all of the dimensional, frontage, and setback requirements of the Ordinance (see Article X, § 1003). Granting the variance would not alter the essential character of the locality, as several of the abutting parcels of land contain residences, despite similarly being located in the CLI Zone. Further, the public's health, safety and welfare will not be threatened as a result of the residential construction. In almost all respects, a residential use of the Property will have a net positive on the community when considering public health, safety and welfare. Additionally, a residential construction will not pose issues that are sometimes associated with commercial developments, such as added traffic, noise, and pollution.

The construction of a residence will cause none of the negative consequences that Article X attempts to protect against (uses that are injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause — see § 1003). Accordingly, the variance in this particular case is justified because it is not contrary to the public interest, and granting the variance is consistent with the spirit of the ordinance.

He said with regard to the "literal enforcement of the provision of the Ordinance will result in an unnecessary hardship":

Pursuant to RSA 674:33-1(b), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

There is no substantial relationship between the general public purpose of the Ordinance and the specific application of the Ordinance to the Property here involved because any purported

purpose of the prohibition of residences in the Commercial/Light Industrial Zone has already been undermined by the fact that there are several residences already allowed in the zone. Of the seven parcels that abut the Applicant's Property in the CLI Zone, three of them contain residences. Accordingly, preventing the Applicant from constructing a residence on his Property would result in an unnecessary hardship in light of the Town's allowance of his neighbors to do the same.

One additional residence will not trigger the harms addressed by the Ordinance, and will in no way, as previously discussed alter the character of the neighborhood. Accordingly, there exists no fair and substantial relationship between the general public purposes of the Ordinance provision at hand and the specific application of that provision to the Applicant's Property. In light of the foregoing, it is appropriate to grant the variance because doing so would be "more considerate of the [Applicant's] constitutional right to enjoy property."

Furthermore, the Applicant's proposed use is a reasonable one. As previously discussed, there are several residences on abutting parcels, all of which are considered reasonable uses by the Town. The Applicant's proposed residence will comply with all of the dimensional requirements applicable to the CLI Zone (see § 1004), and will result in none of the community issues prohibited in § 1003. The Applicant's proposed use, therefore, is reasonable.

The specific conditions of the Applicant's Property further strengthen the argument that literal enforcement of the Ordinance would result in an unnecessary hardship. The topography and layout of the parcel (specifically the location of wetlands and the floodplain on a portion of the Property), seem to indicate that there will not be overwhelming demand for commercial property on this lot. This fact, combined with the character of the neighborhood being a mixture of residential and commercial properties, favors the granting of the Applicant's variance application.

Mr. Stauffacher said before he took over sole ownership of the land, they put the land on the market as a favor and it sat for a year and a half, and then Allenstown approached them about the new school, there was a back and forth and they weren't quite sold on it. He said then Thibeault Construction made them an offer on the land, and they agreed to the offer. Mr. Stauffacher said Thibeault Construction had it surveyed and to them, the cost to mitigate the wetlands was too much money and they could no longer do it at that price.

Mr. Arsenault said the order of the Application criteria is confusing in the way it is numbered.

Mr. Arsenault said that wetlands can be moved, or consolidated. He said he did not see the plans with Thibeault Construction plans but did find the 2008 survey that was done along with an attachment from Army Corps showing the wetlands. He said the location of the residential home is shown on the plan, and doesn't indicate where it is on the overall parcel, and whether there are wetlands where the proposed house is, or where the driveway will be in relation to the wetlands. Mr. Stauffacher provided the 2020 Thibeault survey with a basic overlay, and he can show where the driveway, septic, etc. is on the current survey.

Mr. Stauffacher said that with regard to "Substantial justice would be done by granting the variance":

The guiding rule for this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. In evaluating this standard, the Zoning Board must look at whether the Applicant's proposal is consistent with the area's present use.

The area's present use is a mixture of commercial and residential properties. Of the seven parcels that abut the Applicant's parcel, four parcels are commercial and three are residential. Accordingly, there is no gain to the general public in preventing the Applicant's proposed residential construction as there will be no change to the area's present use. The loss to the Applicant in preventing him from constructing a residence on his land is substantial, and therefore outweighs the non-existent gain to the general public.

Additionally, the Applicant plans to run his general contractor business through the Property. The Applicant intends to construct a shop on the Property that will house stock for various construction projects, and use the Property as a de facto "headquarters" of the business. It is reasonable and commonplace for an individual to run a business out of their home. When considering this proposal from the public's perspective, it will be in the public's interest to allow both a residence and commercial activities on Applicant's Property in the Commercial/Light Industrial Zone, rather than the Applicant attempting to run his business out of a home in a residential zone. While both of the aforementioned scenarios would require a variance, siting a residence in the CLI Zone will result in no harm to the public.

He said in summary with respect to the variance requests:

The Applicant meets the requirements for the granting of a variance with respect to the construction of a residence on the Property as described in the above narrative. Permitting the residence to be built as requested by the Applicant on his Property is reasonable. Granting the variance would not alter the essential character of the locality. The area's present use is a mixture of commercial and residential properties. Additionally, the public's health, safety and welfare will not be threatened as a result of the proposed residential construction.

Mr. Arsenault said that the Planning Board would have to approve if the Zoning Board grants the variance. He said that running his business on the residential property would need to be explained before the Planning Board. Mr. Stauffacher said he would eventually like to build a two or three garage to store scrap material in.

Chair Klawes asked how much of the 36 acres is usable. Mr. Stauffacher said approximately 8 acres is wetlands spread out, and 28 acres of dryland.

Chair Klawes said the property will stay Commercial/ Light Industrial.

Chair Klawes asked Mr. Arsenault what his concerns are. Mr. Arsenault said it was that Residential is not allowed on a Commercial /Light Industrial. He said if he is trying to build on the wetlands, that is a State issue.

Chair Klawes asked Mr. Arsenault if there are requirements regarding the garage that will be built with an office, such as a bathroom. Mr. Arsenault said no, but if it turned into a sales office, then it becomes retail or warehouse space and you have to reconfigure the septic system.

Chair Klawes said it is his experience is that you never can anticipate what could come up in the future and he said they want to make the right decision for both the Town and the owner. Mr. Stauffacher said that further development of the land is not his intent on any level.

Scott McDonald is there to represent the Economic Development Committee. He recommended against granting the variance. He said looking at the topography of the Town and where the water and sewer goes in the future, there is very limited space to develop Commercial and Industrial. Mr. Stauffacher says as a land owner, he has zero interest in selling that land under any circumstance. He said building a residential home on the property will net the Town more money than they are getting right now with nothing on it.

Chair Klawes said that the Zoning Board doesn't take tax implications into consideration when making their decision.

Mr. Goodine said looking at the Maps and plans, he would like to know where the home would be built. Mr. Goodine said he is concerned that of all the areas on the property, that you will put a residential home right in the middle of it which changes what the property is going to be in the future.

There was discussion between Mr. Stauffacher and the Board regarding the right-of-way and access to the property.

Chair Klawes asked how long the property was for sale. Mr. Stauffacher said two years and he only had a few inquiries.

Mr. Stauffacher said that he just wants this to be as simple as possible and that he wants to put down roots in the community.

Mr. Arsenault would like to reiterate testimony that Thibeault is still interested in the property, the easement coming off River Road is a great spot to put a water main on this commercial property, and also it is not difficult to build a building that is not on utilities. He wanted the Board to consider that information.

Mr. Pitaro made a Motion to end the hearing portion of the meeting and enter deliberations. Ms. Baxter seconded the Motion.

Roll call vote was taken.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte-Aye

Matt Pitaro-Aye

Motion was passed unanimously.

Chair Klawes asked for comments relating to whether it would “Diminish the Value of the Surrounding Property.” Ms. Baxter said the argument that was made was there were other properties that had homes already on them. Mr. Pitaro he does not think there will be a diminution. Chair Klawes said he doesn’t know if they can answer the question from a commercial standpoint, by having another parcel that has a house on it that is zoned Commercial/Light Industrial. Mr. Pitaro is not sure that he agreed with Chair Klawes fully. Chair Klawes said there could be a diminish to the properties around it because you are changing the landscape of it. Mr. Pitaro said he is not sure it would diminish or increase if he put the house on it.

With regard to the next criteria, “Granting the Variance is not Contrary to the Public Interest,” Chair Klawes said he does not know if it was or not. Mr. Pitaro said the Applicant’s family has been enjoying the property as it were, and whatever they have been doing has not been obstructive. He said the other homes that are abutting it, does not seem to cause a contradiction to the interest of the public. Chair Klawes said that with regard to the other homes, we do not know what came first. Ms. Baxter said some of the homes were built a long time ago. She said that no one had asked for a variance to build those homes, so the zone changed afterwards.

Mr. Arsenault said the “term” grandfathered is often misunderstood. He said the homes existed prior to the zoning, and it’s a bonus for them, because they could remove their residential home and build a small machine shop.

With regard to “Spirit of the Ordinance” and “Literal Enforcement of the Provision of the Ordinance Will Result in an Unnecessary Hardship,” Mr. Pitaro said someone did point out that the single family home would be in the middle of the plot of land where the access road is located. He said the Applicant did seem like they got approval for a septic, and that it is a very good application, but his only pause for thought is putting the house there. Chair Klawes said regardless of where the house gets located, do they need a variance because it is a hardship on the family. Mr. Pitaro said it is a hardship, because he is applying to build a home and there is a roadblock in the form of zoning.

Mr. Arsenault said you really have to think about the word “hardship.” He said the zoning has been in place since 1978.

Mr. Pitaro said that the Applicant’s testimony satisfied this criteria between figuring out what to do, putting in on the market, etc. Chair Klawes disagreed and does not think it is a hardship. He said there were offers made on the property that the Applicant’s did not accept. Ms. Baxter said he doesn’t have a full 36 acres because of the wetlands and part of that wetland affects the good land, and it limits the commercial space and makes it extremely expensive to do. She said if it were not for the wetlands, she would agree there was no hardship.

Ms. Baxter said the cost to move the wetlands would offset what the land is valued at. Chair Klawes said that we don’t know why Thibeault came in with such a low offer. She asked what would keep him from subdividing down the road if he builds this house, because there still will be some land left over. Mr. Pitaro said in terms of the wetlands, if they grant the variance, they still need to go before the Planning Board as well.

Chair Klawes asked how long did Mr. Stauffacher's family own it. He said they have owned it for 12 years and they knew it was zoned Commercial/ Light Industrial when they bought it. Chair Klawes said he does not know how that creates a hardship because they knew at the time of purchase how it was zoned. Ms. Baxter said it has changed zones several times.

Chair asked if there were any comments regarding "Substantial Justice Would be Done by Granting the Variance."

Chair Klawes asked if they had any no's on any of the criteria. Mr. Pitaro said he does not. Ms. Baxter said she does not. Mr. LaPorte said he does not. Chair Klawes is not convinced that he has met all five criteria at all. He does not think he met any of the criteria.

Mr. LaPorte made a Motion to exit deliberations. Ms. Baxter seconded the Motion.

Roll call vote was taken.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte-Aye

Matt Pitaro-Aye

Motion was passed unanimously.

Mr. Pitaro made the Motion to approve the application from Paul Stauffacher to grant a variance to build a single family home on 91 Pinewood Road, Allenstown, NH. Mr. seconded the Motion.

Chair Klawes made an Amendment to the Motion to add the words "as presented" and "no further residential structures" are allowed. Mr. Pitaro and Ms. Baxter agreed with this. Ms. Baxter seconded the Motion.

Chair Klawes said it should be worded to grant ZBA case 2021-01-91 Pinewood Road, Tax Map #103, Lot 3 to allow the application to go forward as presented and allow no further residential structures on the property.

Roll call vote was taken on the Amendment.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte-Aye

Matt Pitaro-Aye

Motion was passed 4-0.

Roll call vote was taken on the Motion as amended.

Keith Klawes- No

Dawna Baxter- Aye

Steve LaPorte—Aye

Matt Pitaro-Aye

Motion was passed 3-1.

Mr. Stauffacher asked if this will prevent him from building a garage for his cars. The Board said no.

Mr. Arsenault said within 30 days, anyone who has standing in the community can request a rehearing on the variance, including Zoning Board members.

Unapproved Minutes & Unsigned Minutes

o December 9, 2020

Ms. Baxter made a Motion to approve the minutes from December 9, 2020. Mr. Pitaro seconded the Motion.

Roll call vote was taken on the Motion as amended.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte—Abstained

Matt Pitaro-Aye

The Motion was passed.

Staff Update

None.

Adjourn

Mr. Pitaro a motion to adjourn meeting which was seconded by Ms. Baxter at 9:00 PM. Roll call vote was taken.

Keith Klawes- Aye

Dawna Baxter- Aye

Steve LaPorte—Aye

Matt Pitaro-Aye

Motion was passed 4-0.

Zoning Board of Adjustment
SIGNATURE PAGE
June 23, 2021

SIGNATURE	MEMBER	DATE
	Keith Klawes, Chairman	1/20/22
	Diane Adinolphi, Member	1/20/2022
	Steve LaPorte, Member	
	Matt Pitaro, Secretary	
	George Lemire, Member	